

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT
OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District:
Name (under which you were convicted): DAVID NORWAY WINSTEAD		Docket or Case No.: 2011-DCR-028411
Place of Confinement : COFFIELD UNIT, TENNESSEE COLONY, TEXAS	Prisoner No.: TDCJ#01853875 SID #05889825	
Petitioner (include the name under which you were convicted) DAVID NORWAY WINSTEAD		Respondent (authorized person having custody of petitioner) STATE OF TEXAS
The Attorney General of the State of		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

357TH DISTRICT COURT IN CAMERON COUNTY, TEXAS

(b) Criminal docket or case number (if you know): 2011-DCR-02841

2. (a) Date of the judgment of conviction (if you know): SEPTEMBER 7, 2012

(b) Date of sentencing: SEPTEMBER 7, 2012

3. Length of sentence: 30 YEARS TDCJ PRISON

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☐ (2) Guilty ☐ (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one) ☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing? ☐ Yes ☒ No

8. Did you appeal from the judgment of conviction? ☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: COURT OF APPEALS FOR THE 13TH DISTRICT

(b) Docket or case number (if you know): 13-12-5899-CR

(c) Result: The Court of Appeals affirmed the judgment and sentence,

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): Winstead v. State, No. 13-12-589-CR (TexApp-Corpus Christi (Unpublished) 2014WR388238

(f) Grounds raised: Grounds are the same as those presented here in this 2254.

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Court of Criminal Appeals of Texas

(2) Docket or case number (if you know): Pending -- WR-83,879-02

(3) Result: Pending -- WR-83,879-02

(4) Date of result (if you know): Pending -- WR-83,879-02

(5) Citation to the case (if you know): WR-83,879-02

(6) Grounds raised: Grounds are the same as those presented here in this 2254.

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☒ No

Petitioner's first filing in State Court was dismissed for form but not decided.

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Court of Criminal Appeals of Texas
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: Post Conviction Habeas Corpus
- (5) Grounds raised: Grounds are the same as those presened here in this 2254.
- _____
- _____
- (6) Did you receive a hearing where evidence was given on your petition, application, or motion?
- ☐ Yes ☒ No
- (7) Result: Dismissed without decision for form, refiled on allegations of fact.
- _____
- _____
- (8) Date of result (if you know): N/A

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: Court of Criminal Appeals of Texas
- (2) Docket or case number (if you know): WR-83,879-02
- (3) Date of filing (if you know): December 23, 2015
- (4) Nature of the proceeding: Habeas Post Conviction
- (5) Grounds raised: Grounds are the same as those presened here in this 2254.
- This was not a second application.
- _____
- _____
- (6) Did you receive a hearing where evidence was given on your petition, application, or motion?
- ☐ Yes ☒ No
- (7) Result: Pending -- WR-83,879-02
- _____
- _____
- (8) Date of result (if you know): Pending -- WR-83,879-02

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes

☐ No

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☒ No

(2) Second petition: ☐ Yes ☒ No

(3) Third petition: ☐ Yes ☒ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The Court of Appeals used an unconsitiutional standard in reviewing Applicant's issues on appeal complaining of lack of adequate notice of the enancement allegations. The standard for determining whether notice of enhancement allegations were adequate violates the presumption of innocence by shifting the burden to the defendant to prove a defense to the accusation.

(b) If you did not exhaust your state remedies on Ground One, explain why: We did exhaust them.

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: The appellate lawyer did not percieve the error. The trial lawyer did not have an appportunity, since the error took place on appeal.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state: Type of motion or petition:

Type of motion or petition: Post Conviction Application for Post-Conviction Habeas . Tex Code/ CrimPart11.07

Name and location of the court where the motion or petition was filed: Court of Criminal Appeals of Texas Austin, Texas 08/05/15

Docket or case number (if you know): WR-83,879-01 & WR-83,879-02

Date of the court's decision: Pending -- WR-83,879-02

Result (attach a copy of the court's opinion or order, if available): Pending - Decision, Objections to proposed decision pending in Trial Court of Criminal Apeals of Texas

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Objections to proposed decision in the Trial Court and in Court of Criminal Appeals of Texas are pending.

GROUND TWO:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The standard for determining whether notice of enhancement allegations was timely should be the same as that for disclosure of blood-splatter evidence pretrial.

- (b) If you did not exhaust your state remedies on Ground Two, explain why: We did exhaust them.

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why: The appellate lawyer did not percieve the error. The trial lawyer did not have an appportunity, since the error took place on appeal.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state: Type of motion or petition:

Type of motion or petition: Post Conviction Application for Post-Conviction Habeas . Tex Code/ CrimPart11.07

Name and location of the court where the motion or petition was filed: Court of Criminal Appeals of Texas Austin, Texas 08/06/15

Docket or case number (if you know): WR-83,879-01 & WR-83,879-02

Date of the court's decision: Pending -- WR-83,879-02

Result (attach a copy of the court's opinion or order, if available): Pending - Decision, Objections to proposed decision pending in Trial Court of Criminal Apeals of Texas

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you: have used to exhaust your state remedies on Ground Two: Objections to proposed decision in the Trial Court and in Court of Criminal Appeals of Texas are pending.
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GROUND THREE:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The trial court erred in allowing Mr. David Winstead to wear a jail suit during jury selection. This impinged upon his presumption of innocence.
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- (b) If you did not exhaust your state remedies on Ground Three, explain why? We did exhaust them.
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(c) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No
- (2) If you did not raise this issue in your direct appeal, explain why: The appellate lawyer did not perceive the error. The trial lawyer did not have an opportunity, since the error took place on appeal.
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(d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?
- ☒ Yes ☐ No

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Application for Post-Conviction Habeas . Tex Code/ CrimPart11.07

Name and location of the court where the motion or petition was filed: Court of Criminal Appeals of Texas
Austin, Texas 08/06/15

Docket or case number (if you know): WR-83,879-01 & WR-83,879-02

Date of the court's decision: Pending -- WR-83,879-02

Result (attach a copy of the court's opinion or order, if available): Pending - Decision, Objections to
proposed decision pending in Trial Court of Criminal Appeals of Texas

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: Objections to proposed decision in the Trial Court
and in Court of Criminal Appeals of Texas are pending.

GROUND FOUR:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The prosecutor violated Winstead's right to remain silent by commenting on Winstead's not testifying in trial.

- (b) If you did not exhaust your state remedies on Ground Four, explain why: We did exhaust them.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: The appellate lawyer did not percieve the error. The trial lawyer did not have an appportunity, since the error took place on appeal.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Application for Post-Conviction Habeas . Tex Code/ CrimPart11.07

Name and location of the court where the motion or petition was filed: Court of Criminal Appeals of Texas
Austin, Texas 08/06/15

Docket or case number (if you know): WR-83,879-01 & WR-83,879-02

Date of the court's decision: Pending -- WR-83,879-02

Result (attach a copy of the court's opinion or order, if available): Pending -- WR-83,879-02

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: Objections to proposed decision in the Trial Court and in Court of Criminal Appeals of Texas are pending.

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: That application is pending before the Court of Criminal Appeal of Texas.

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them: NO

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised. The Court of Criminal Appelas of Texas, Austin, Texas, WR-83,879-01 & WR-83,879-02

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Derek Alonso Juarez, 1104 E. 7th St., Suite A, Brownsville, TX 78520

(b) At arraignment and plea: Derek Alonso Juarez, 1104 E. 7th St., Suite A, Brownsville, TX 78520

(c) At trial: Derek Alonso Juarez, 1104 E. 7th St., Suite A, Brownsville, TX 78520

(d) At sentencing: Derek Alonso Juarez, 1104 E. 7th St., Suite A, Brownsville, TX 78520

(e) On appeal: Alfredo Padilla, 777 E. Harrison St., Second Floor, Brownsville, Texas 78520

(f) In any post-conviction proceeding: Larry Warner, 3109 Banyan Dr., Harlingen, Texas 78550

(g) On appeal from any ruling against you in a post-conviction proceeding: _____
Larry Warner, 3109 Banyan Dr., Harlingen, Texas 78550

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____
N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No N/A

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.¹

N/A

¹The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-
 - (A) The date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) The date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) The date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Grant a new trial in civilian clothes. Grant a new
appeal, and brief the noted harm.

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for
Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.